

## CHAPTER 691

S.B. No. 1189

AN ACT

relating to boll weevil control; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subchapter A, Chapter 74, Agriculture Code, is amended to read as follows:

## SUBCHAPTER A. BOLL WEEVIL CONTROL

Sec. 74.001. **PUBLIC NUISANCE.** The *Anthonomus grandis* Boheman, known as the boll weevil, is a public nuisance and a menace to the cotton industry, and its *control* [~~eradication~~] is a public necessity.

Sec. 74.002. **DEFINITIONS.** *In this subchapter:*

(1) "Cotton" includes the cotton plant, cotton in the boll, cotton stalk, and all cotton products, including seed cotton, cottonseed, and cotton hulls, but not including cotton oil or cotton meal.

(2) "Host plant" means a plant susceptible to infestation by the boll weevil.

(3) "Boll weevil" means the insect *Anthonomus grandis* Boheman, in any stage of development, including the egg, larval, pupal, and adult stages.

Sec. 74.003. **ESTABLISHMENT OF PEST MANAGEMENT ZONES.** (a) Any producer organization authorized under the laws of this state and representing cotton producers may petition the commissioner for certification to establish a pest management zone. A pest management zone may include all or part of one or more counties.

(b) Within 15 days following the day on which a petition for certification is received, the commissioner shall determine whether or not to grant certification.

(c) If the commissioner determines that, on the basis of information submitted, the petitioning organization is representative of cotton producers within the boundaries described in the petition and that the petition conforms to the purposes and provisions of this subchapter, the commissioner shall certify that the organization is representative of the producers of the commodity within the described area and is authorized to establish a pest management zone.

(d) An administrative committee shall govern each pest management zone. The committee shall consist of one authorized representative of the department, one cotton producer from each of the counties in the pest management zone in which

cotton production occupies less than 50,000 acres, and two cotton producers from each of the counties in the pest management zone in which cotton production exceeds 50,000 acres.

(e) The commissioner shall appoint the producer members of the administrative committee for a term of two years expiring on December 31 of the second year, selecting the appointees from a pool of nominees submitted by certified cotton producer organizations as defined in Section 14 of the federal Cotton Research and Promotion Act (7 U.S.C. Sections 2101-2118). Nominees must be resident active producers from a county within the proposed zone. A minimum of three nominees must be provided for each producer position on each administrative committee.

(f) The administrative committee of a pest management zone organized under this section shall:

(1) make recommendations to the department regarding control of the boll weevil in the zone including recommendations or regulations needed to control and prevent boll weevil infestation;

(2) make recommendations on any legislative changes that are needed; and

(3) give advice and counsel to the department regarding effective enforcement of this subchapter within the zone.

Sec. 74.004. DESTRUCTION OF HOST PLANTS. (a) On petition of the administrative committee of a pest management zone, the department may establish regulated areas, dates, and appropriate methods of destruction of stalks, other parts, and products of host plants for boll weevils, including requirements for destruction of foliage, fruiting structures, and root systems of host plants after harvest.

(b) If on inspection of a field after harvest, the department determines that host plants or any parts or products of host plants have not been destroyed within the time specified by regulation of the department, the department may declare the field to be a public nuisance.

(c) On the declaration of a field as a public nuisance, the department may take any action necessary to complete destruction of host plants or host plant products or parts to prevent the spread of boll weevils from the infested area and shall:

(1) immediately give written notice to any farm owner and to the operator in charge of the field that the field is in violation of this section, instructing the owner and operator to destroy host plants or host plant products or parts within seven days after the date written notice is received;

(2) publish the notice in a newspaper of general circulation in the county where the land is located and post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation, if either the owner or operator of the field cannot be located after a reasonably diligent effort by the department; and

(3) have the host plants or host plant products or parts destroyed, if no response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field or if the department considers a response inadequate.

(d) If adverse weather conditions or other good cause exists, the commissioner may, on written request by a farm owner or operator, grant an extension of the date of implementation of appropriate host plant or host plant product or part destruction.

(e) If it becomes necessary for the department to contract with someone to destroy host plants or host plant products or parts, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction.

(f) If neither the farm owner nor operator reimburses the department as provided by Subsection (e) of this section within 30 days after the date of the completion of department action under Subsection (c) of this section, or, if an extension has been granted under Subsection (d) of this section, within 30 days after the date of expiration of the extension, the department may place a lien against the property on which the infestation occurred.

(g) The department may perfect the lien by filing the lien, a sworn statement of the indebtedness, and a description of the property subject to the lien with the county clerk of the county in which the property is located. The lien must be filed within a 30-day period following the expiration of the 30-day period described in Subsection (f) of this section. Within 180 days after the date of filing the lien, the department may file suit in a court of competent jurisdiction for collection of the account and foreclosure of the lien. Neither the department nor any person to whom the account is assigned may be required to post a cost bond in the suit. The court shall enter judgment for the debt with interest and costs of suit and foreclosing the lien on premises as the court determines necessary for the defraying of expenses, court costs, and the fees owed.

(h) All reimbursements and additional costs collected under this section shall be deposited in the State Treasury in a special fund to be appropriated to the department to carry out this subchapter.

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal sanctions under this subchapter.

Sec. 74.005. **ENTRY POWER; INSPECTIONS.** For the purpose of enforcing this chapter, the department is entitled to:

- (1) enter any field of host plants or any premises in which a host plant or its product is stored or held;
- (2) examine any product, container, or substance susceptible to boll weevil infestation; and
- (3) examine the records of a purchaser, handler, or common carrier of host plant products.

Sec. 74.006. **RULES.** The department may adopt rules as are necessary for the efficient enforcement and administration of this subchapter.

Sec. 74.007. **OFFENSES; PENALTY.** (a) A person commits an offense if the person:

- (1) violates a proclamation or a rule or restriction adopted under this subchapter;
- (2) brings into this state any material contaminated with boll weevils; or
- (3) fails to comply with a rule adopted for the control and direction of host plant growing.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$50 nor more than \$500;
- (2) confinement in jail for not less than 10 nor more than 30 days; or
- (3) both fine and confinement under this subsection.

(c) It is a defense to prosecution under this section that the defendant's act or failure to act was in accordance with a rule adopted by the department. ~~[APPROVAL AND ENFORCEMENT OF COTTON PRODUCERS BOARD RULES. If a cotton producers board is established and certified under Chapter 41 of this code, the department shall enforce the rules relating to control and eradication of the boll weevil that are adopted by the board and are approved by the department.]~~

~~[Sec. 74.003. **ENTRY POWER.** For the purpose of investigating compliance with rules of a cotton producers board under Section 74.002 of this code, the department is entitled to enter any field of cotton or premises in which cotton or its products are stored or held. The department is entitled to examine any product, container of cotton, or other substance that is subject to boll weevil infestation.]~~

~~[Sec. 74.004. **PENALTY.** (a) A person commits an offense if the person violates a rule relating to control and eradication of the boll weevil adopted by a cotton producers board under Chapter 41 of this code.]~~

~~[(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 nor more than \$200.]~~

~~[(e) A person commits a separate offense for each day that a violation continues.]~~

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of calendars in both houses create an emergency and an imperative public necessity that constitutional rule requiring bills to be read on three several days in each house suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1987, by a viva-voce vote; and that the Senate concur in House amendments on June 1, 1987, by a viva-voce vote. Passed the House with amendments, on May 30, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.